

- 6-1.100 Department of Justice Policy and Responsibilities**
 - 6-1.110 Criminal Tax Cases**
 - 6-1.120 Civil Tax Cases**
 - 6-1.130 Other Relevant Manuals for United States Attorneys**
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6-1.100 Department of Justice Policy and Responsibilities

The Assistant Attorney General in charge of the Tax Division, subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General, is responsible for conducting, handling, or supervising all matters arising under the internal revenue laws. 28 C.F.R. § 0.70.

The Department of Justice, including the United States Attorneys, is responsible for the conduct of all phases of federal tax litigation in the federal district and appellate courts and in state courts, including the prosecution of criminal tax cases, the collection of tax claims in bankruptcy, probate and insolvency proceedings, the defense of mortgage foreclosure suits involving tax liens, the initiation of collection suits against delinquent taxpayers, the defense of refund litigation, and the handling of administrative summonses cases. All federal tax litigation, except that in the Tax Court, in which the United States is a party must be handled by attorneys who are either employed by the Department of Justice or are authorized by it to represent the United States.

NOTE THAT TAX INFORMATION PROVIDED BY THE IRS TO THE DEPARTMENT OF JUSTICE IS CONFIDENTIAL, MAY BE USED ONLY IN ACCORDANCE WITH 26 U.S.C. § 6103, AND MUST BE SAFEGUARDED TO PREVENT UNAUTHORIZED DISCLOSURE AND USE. SEE TAX INFORMATION SECURITY GUIDELINES FOR FEDERAL, STATE, AND LOCAL AGENCIES (IRS PUB. 1075 (REV. 2-96)).

6-1.110 Criminal Tax Cases

The Tax Division generally has the responsibility of authorizing prosecution in criminal proceedings arising under the internal revenue laws. Once prosecution is authorized, United States Attorneys generally have the initial responsibility for the trial of criminal tax cases. However, the Tax Division has a staff of highly qualified trial attorneys who will render assistance in criminal tax cases upon request. The litigation assistance may be in the form of a senior Tax Division attorney who, either individually or with another Division attorney, may handle the grand jury investigative and/or trial aspects of a criminal tax case or even may assume responsibility for a period of time of a district's criminal tax docket. In other instances, the assistance may be provided by a Tax Division attorney acting as co-counsel with an Assistant United States Attorney in one or more cases or investigations. Tax Division attorneys also are available for consultation and assistance on criminal tax policy and litigation matters, including foreign evidence gathering problems. Contact the appropriate Criminal Enforcement Section for assistance. *See Tax Resource Manual at 9.*

6-1.120 Civil Tax Cases

A. Tax Division Responsibility. In civil tax litigation, the primary responsibility for handling most of the cases rests with attorneys from the Tax Division's Civil Trial Sections. See Tax Resource Manual at 21 for organization chart. The function of the United States Attorney in civil tax cases varies depending on the nature of the case. In tax cases in the United States District Court, the United States Attorney and his/her designated Assistant United States Attorney are counsel of record.

B. Referrals from the Tax Division. On occasion, special circumstances may make it desirable for the government to be represented in a particular civil tax case by the United States Attorney, and not by an attorney from one of the Civil Trial Sections. The Chief of the appropriate Civil Trial Section or one of his/her Assistants is authorized to make the determination. An individual trial attorney has no authority to allow a United States Attorney to represent the government in any civil tax case. When, however, the United States Attorney is authorized to handle a civil tax case, a trial attorney will also be assigned to the case.

C. Direct Referrals. Some types of civil tax cases are assigned directly to the United States Attorneys, including certain types of bankruptcy proceedings, actions under 28 U.S.C. § 2410 (other than interpleaders), and some types of summons litigation. In such cases, when United States Attorneys are unable because of personnel shortages or for other uncontrollable circumstances to staff civil tax cases for which their offices have litigation responsibilities, the Tax Division should be contacted and assistance requested. In the event that the Tax Division is unable to provide such assistance, it will undertake to aid the United States Attorney in preparing the paperwork necessary to have an IRS attorney appointed as a Special Assistant United States Attorney as an interim measure until the crisis is over.

D. Special Assistant United States Attorneys. In a district in which an IRS District Counsel office is located, special arrangements can be made with the concurrence of the Tax Division, the United States Attorney, and the District Counsel to have one or more District Counsel attorneys appointed as Special Assistant United States Attorney to handle certain bankruptcy matters.

6-1.130 Other Relevant Manuals for United States Attorneys

United States Attorneys have been furnished with the Tax Division's Criminal Tax Manual (1994), the Tax Division Judgment Collection Manual (1997), and the Tax Division's Primer on IRS Summons Enforcement (1996). The Criminal Tax Manual is a comprehensive procedural and substantive guide to the handling of criminal tax cases and includes jury instructions and other forms. It is available by a request directed to the Chief of the Criminal Appeals and Tax Enforcement Policy Section, and is also published as part of the USABook Library.

The Judgment Collection Manual is a procedural guide to collection of tax judgments and emphasizes procedures not available in attempting to collect non-tax judgments.

The Primer on IRS Summons Enforcement is a guide to the law relating to enforcement of IRS summonses.

These publications should be of assistance to United States Attorneys and their staffs in the conduct of tax litigation. Nevertheless, this Title of the USAM will prevail in any instance where any other manual is in derogation or conflict.